munasabah. Ini juga bermakna jika pemohon gagal atau enggan memberi penilaian atau tuntutan maka pampasan adalah tertakluk kepada budibicara Pemungut Hasil Tanah. Peruntukan statut itu juga berkehendakkan bahawa budibicara Pemungut Hasil Tanah dalam keadaan yang sedemikian tidak boleh disangkal melainkan terlebih dahulu pemohon memberi alasan atas kegagalan atau keengganannya membuat penilaian dan tuntutan yang boleh diterima sebagai alasan yang cukup oleh hakim Mahkamah Tinggi. Ini telah tidak berlaku dalam kedua-dua kes ini.

Peruntukan statut yang kedua yang hendak dipakai dalam rayuan ini ialah s 2 Jadual Pertama Akta tersebut. Seksyen 2 jelas maksudnya bahawa untuk mencapai satu amaun pampasan di bawah Akta itu perkara-perkara yang disenaraikan di bawah s 2 hendaklah diambil kira dan perkara lain *tidak* boleh diambil kira. Perenggan (d) walaupun luas skopnya, iaitu sebagai tambahan kepada perkara yang disebut dalam perenggan (c) tidaklah bermakna tuntutan yang tidak berasas atau tidak terbukti boleh dibuat untuk meningkatkan lagi had amaun pampasan. Sebagai contoh kami berpendapat bahawa YA hakim Mahkamah Tinggi telah terkeluar daripada skop perenggan (d) Jadual Pertama dengan memberi pampasan berkenaan dengan belanja pengiklanan dan belanja harga kertas (butiran 1 dalam penghakiman), harga membaiki rumah yang jelas mengikut keterangan dibuat dalam atau sebelum tahun 1972 (butiran 2 dalam penghakiman), perbelanjaan perundangan dan cukai setem dan perbelanjaan profesion (butiran 4 dan 5 dalam penghakiman), pembayaran 'goodwill' (butiran 7 dalam penghakiman) dan akhir sekali pembayaran kononnya sebagai pampasan di bawah Akta Pengawalan Sewa (Rent Control Act) (butiran 8 dalam penghakiman). Semua pampasan yang disebutkan itu adalah dibuat berdasarkan semata-mata dengan cara spekulasi.

Dengan alasan seperti disebut di atas, kedua-dua rayuan telah dibenarkan dan perintah pampasan Pemungut Hasil Tanah dipulihkan kembali. Oleh sebab kesilapan yang membawa kepada jumlah pampasan yang terlalu berlebihan dilakukan oleh YA hakim sendiri, maka mahkamah ini tidak membuat perintah kos rayuan terhadap kedua-dua responden.

Rayuan-rayuan dibenarkan.

Peguamcara: *Gill & Tang.*

Dilapurkan oleh *Prof Ahmad Ibrahim*

Kirames Sdn Bhd v Federal Land Development Authority

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO C22-118-86
ZAKARIA YATIM J
7 NOVEMBER 1990

Arbitration — Interlocutory injunction — Arbitration clause — Application for stay of proceedings by defendant — Subsequent application to set aside interlocutory injunction — Whether court had jurisdiction — Arbitration Act 1952, s 6

Civil Procedure — Interlocutory injunction — Arbitration clause — Application for stay of proceedings by defendant — Subsequent application to set aside interlocutory injunction — Whether court had jurisdiction — Arbitration Act 1952, s 6

Banking — Performance guarantee or bond — Whether document a performance guarantee — Demand for payment — No allegation or evidence of fraud — Whether payment can be restrained

The plaintiff and defendant entered into an agreement whereby the defendant agreed to supply to the plaintiff reinforced concrete spun pipes. As a condition precedent to the execution of the agreement, the plaintiff was required to deposit a sum equivalent to 5% of the value of the contract as the security deposit. A dispute arose and the plaintiff commenced proceedings and obtained an ex parte injunction restraining the defendant from any act of whatsoever nature in relation to the security deposit and maintain the status quo pending the outcome of the suit. By consent, the defendant subsequently obtained a stay of the proceedings pursuant to a provision of the Arbitration Act 1952. The defendant then applied to set aside the injunction. The issues before the court were (i) whether the court had power to set aside the injunction when a stay of proceedings had been granted on the application of the defendant; (ii) the nature of the security deposit; and (iii) whether the injunction ought to be set aside.

Held, allowing the defendant's application:

(1) Under s 6 of the Arbitration Act 1952, a party to a proceeding may, before taking any other steps to the proceedings, apply to the court for a stay of the proceedings to enable the parties to the proceedings to refer their dispute to arbitration. Although a consent order for the stay of proceedings was obtained by the defendant, the defendant is still at liberty to proceed with an application for an interlocutory injunction or apply to set aside an ex parte injunction. The court has power to grant interlocutory and auxiliary relief.

(2) A performance guarantee or performance bond is a guarantee given by a bank on behalf of its customer that the customer will duly carry out the contract of sale. It is clear that the security document is a guarantee given on behalf of the plaintiff for the due performance of the contract and therefore a performance guarantee or performance bond.

(3) Except when there is a clear case of fraud, the defendant in the present case is entitled to demand payment under the terms of the security guarantee. There is no evidence of fraud and the injunction is therefore set aside.

[Bahasa Malaysia summary

Plaintif dan responden telah membuat perjanjian bahawa defendan akan membekalkan kepada plaintif 'reinforced concrete spun pipes'. Sebagai syarat terdahulu kepada pelaksanaan

perjanjian itu, plaintif diminta membayar wang sebanyak 5% daripada nilai kontrak itu sebagai deposit jaminan. Perbalahan berlaku dan plaintif memulakan prosiding dan mendapat injunksi ex parte menahan defendan daripada melakukan apa-apa yang berkenaan dengan deposit jaminan itu dan untuk memastikan bahawa status quo tidak berubah sementara menunggu perbicaraan. Dengan secara persetujuan, defendan kemudian mendapat penggantungan prosiding di bawah peruntukan dalam Akta Timbangtara 1952. Defendan selepas itu, memohon untuk injunksi itu diketepikan. Isu-isu di hadapan mahkamah ialah (i) sama ada mahkamah mempunyai kuasa untuk mengenepikan injunksi apabila penggantungan prosiding telah diberi ke atas permohonan defendan; (ii) sifat deposit jaminan; dan (iii) sama ada injunksi itu harus diketepikan.

Diputuskan, membenarkan permohonan defendan:

(1) Di bawah s 6 Akta Timbangtara 1952, pihak pada satu prosiding boleh, sebelum mengambil lain tindakan dalam prosiding itu, memohon kepada mahkamah untuk penggantungan prosiding untuk membolehkan pihak-pihak berkenaan menyerahkan perbalahan mereka kepada timbangtara. Walaupun perintah persetujuan untuk penggantungan prosiding telah didapati oleh defendan, tetapi defendan masih bebas untuk memohon injunksi interlokutori atau memohon untuk mengenepikan injunksi ex parte. Mahkamah ada kuasa untuk memberi relif interlokutori atau tambahan ('auxiliary relief').

(2) Jaminan pelaksanaan ('performance guarantee') atau bon pelaksanaan ('performance bond') adalah jaminan yang diberi oleh bank bagi pihak pelanggannya bahawa pelanggan itu akan tetap melaksanakan kontrak pembelian itu. Di sini jelas bahawa dokumen jaminan itu ialah jaminan yang diberi bagi pihak plaintif untuk pelaksanaan kontrak itu dan oleh kerana itu, dokumen itu ialah jaminan pelaksanaan atau bon pelaksanaan.

(3) Kecuali apabila ada kes penipuan yang terang, defendan dalam kes ini berhak menuntut pembayaran di bawah terma-terma jaminan itu. Tidak didapati keterangan tentang penipuan dalam kes ini dan injunksi diketepikan.]

Cases referred to

1 *Roussel-Uclaf* v *GD Searle & Co Ltd* [1978] FSR 95 (refd)
2 *Queens College Kanetra* v *The Collector* AIR 1974 All 431 (refd)
3 *Bolivinter Oil SA* v *Chase Manhattan Bank* [1984] 1 WLR 392 (refd)
4 *RD Harbottle (Mercantile) Ltd* v *National Westminster Bank Ltd & Ors* [1977] 2 All ER 862 (refd)
5 *Edward Owen Engineering Ltd* v *Barclays Bank International Ltd* [1978] 1 All ER 976 (refd)
6 *United Trading Corp SA* v *Allied Arab Bank Ltd* [1985] 2 Lloyd's Rep 554 (refd)
7 *Hamzeh Malas & Sons* v *British Imex Industries Ltd* [1958] 2 QB 127 (folld)
8 *Howe Richardson Scale Co Ltd* v *Polimex-Cekop* [1978] 1 Lloyd's Rep 161 (folld)
9 *Intraco Ltd* v *Notis Shipping Corp of Liberia ('The Bhoja Trader')* [1981] 2 Lloyd's Rep 256 (refd)

Legislation referred to

Arbitration Act 1952 s 6

K Satchiananda Manickam for the plaintiff.
S Navaratnam (Ms) for the defendant.

Cur Adv Vult

Zakaria Yatim J: In this application the defendant has asked the court to make the following order:

(1) that the injunction granted ex parte to the plaintiff on 6 May 1986 be set aside;
(2) that an enquiry be ordered to be made by the senior assistant registrar as to damages suffered by the defendant as a result of the injunction and that the plaintiff be ordered to pay such damages as assessed to the defendant;
(3) the costs of and incidental to the application be paid by the plaintiff.

The restraining order granted ex parte on 6 May 1986 states, inter alia, as follows:

> It is ordered that the defendants by themselves, their servants, agents or otherwise howsoever be restrained by an injunction from doing any act of whatsoever nature in relation to an agreement entered into between the plaintiffs as the suppliers and the defendants as the authority dated 3 October 1985 or in any way affecting the same or in any applying to M/s Jerneh Insurance Corporation Sdn Bhd for the enforcement of the security deposit or forfeiting the said deposit till the disposal of this civil suit and it is ordered that the defendants by themselves, their servants, agents or otherwise howsoever be restrained by an injunction from doing any act of whatsoever nature in relation to the security deposit and maintain the status quo vis-a-vis the plaintiffs and defendants pending the outcome of this civil suit.

The defendant, in its affidavit affirmed on 22 May 1986 in support of the application to set aside the above order, avers that the plaintiff's claim in this action was based on an agreement No C-232485-vs OSP. Under cl 16 of the general conditions of the said agreement, any dispute arising out of the said agreement should be referred to arbitration within the meaning of the Arbitration Act 1952. The plaintiff had not resorted to this step but had commenced the present proceedings. The defendant was prepared and willing to submit the matter to arbitration under the terms of the said agreement.

It is not in dispute that the said agreement was entered into between the plaintiff and the defendant on 3 October 1985. Clause 16 of the general conditions of the agreement is the arbitration clause and it reads as follows:

> Any dispute or difference arising out of this contract shall be referred to the arbitration of a person to be mutually agreed upon between the suplier and the authority and failing agreement to some person appointed on the application of either of the parties to the contract by the president for the time being of the Institution named in the Appendix. This shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1952 (Act 93 — Revised 1972) or any statutory modification thereof for the time being in force.

On 21 August 1986, the court made a consent order granting the defendant liberty to stay proceedings in

this suit pursuant to the provisions of the Arbitration Act 1952.

At the hearing of the application to set aside the injunction, Mr K Satchianda, counsel for the plaintiff raised a question as to whether the defendant could proceed with the hearing of the application or whether the court had the power to set aside the injunction when a stay of proceedings had been granted by the court on the application of the defendant. He then referred to *Russell on Arbitration* (20th Ed) at p 297 where the learned author said, 'in addition to its powers to make orders relating to merely procedural matters, the court has wide powers to make orders for the purpose of preserving the status quo pending arbitration.' He submitted that if the injunction was dissolved then the purpose of going to arbitration would be defeated.

Miss S Navaratnam, counsel for the defendant, referred to the same passage in *Russell on Arbitration* (20th Ed) and submitted that the court had the power to grant interlocutory and auxiliary relief. Accordingly, she said,this court had jurisdiction to hear the defendant's application to set aside the injunction.

The issue before the court is whether the defendant, after obtaining the consent order dated 21 August 1986, is entitled to proceed with the application to set aside the injunction.

Under s 6 of the Arbitration Act 1952, a party to a proceeding may, before taking any other steps to the proceedings, apply to the court for a stay of the proceedings to enable the parties to the proceedings to refer their dispute to arbitration.

In the present case, the plaintiff filed a writ of summons against the defendant on 5 May 1986. On the same day the plaintiff filed an ex parte application and on 6 May 1986, obtained the injunction against the defendant.

In my opinion, although a consent order for stay of proceedings has been obtained, the defendant is still at liberty to proceed with the application. Even before an order for stay of proceedings was obtained, that is, when the applicant must not take any other steps in the legal proceedings, it is entitled to ask for an interlocutory injunction or to apply to set aside an ex parte injunction. In *Roussel-Uclaf* v *GD Searle & Co Ltd*,[1] the court decided as follows:

> (5) By the words 'after appearance and before delivery of any pleadings or taking any other step in the proceedings', s 1 of the Arbitration Act contemplated some positive procedural act by way of offence on the part of the defendant rather than merely parrying a blow by the plaintiff, particularly where the attack consisted of asking for an interlocutory injunction (p 105).

In *Queens College Kanetra* v *The Collector*,[2] Mathur J said, at pp 432 and 433, 'I am unable to accept the contention that taking steps to set an ex parte injunction vacated amounts to taking such a step in the suit as would disentitle the defendants for applying for stay under s 34 ...'. *SD Singh on Arbitration* (8th Ed) at p 614 states:

> While the court has power to issue an interim injunction during the course of an arbitration proceeding it will also have power to entertain an application for setting aside an ex parte injunction, even though the suit in which the ex parte injunction was passed, may have been stayed under section 34.

Having decided that the defendant can proceed with the application to set aside the injunction, the next point to consider is whether the injunction should be set aside. As already stated, the injunction restrained the defendant from enforcing the security deposit or forfeiting the said deposit. Miss Navaratnam rightly submitted that the security deposit arose from a separate contract between the defendant and a third party. She citied two cases on this point, viz *Bolivinter Oil SA* v *Chase Manhattan Bank*;[3] and *RD Harbottle (Mercantile) Ltd* v *National Westminster Bank Ltd & Ors*.[4] In *Edward Owen Engineering Ltd* v *Barclays Bank International Ltd*,[5] the English Court of Appeal decided that, where a bank had given a performance guarantee, it was required to honour the guarantee according to its terms. According to the court the only exception was that where fraud by one of the parties to the contract had been established and the bank had notice of the fraud. No question of fraud was raised in that case. In his judgment in that case at p 983, Lord Denning MR said:

> All this leads to the conclusion that the performance guarantee stands on a similar footing to a letter of credit. A bank which gives a performance guarantee must honour the guarantee according to its terms. It is not concerned in the least with the relations between the supplier and the customer; nor with the question whether the supplier has performed his contracted obligation or not; nor with the question whether the supplier is in default or not. The bank must pay according to its guarantee, on demand if so stipulated, without proof or conditions. *The only exception is when there is a clear fraud of which the bank has notice.* (Emphasis added).

Ackner LJ, as he then was, in his judgment in *United Trading Corp SA* v *Allied Arab Bank Ltd*[6] described *Edward Owen*'s case[5] as ' ... the locus classicus for the proposition that a performance bond, standing on a similar footing to a letter of credit, obliges a bank to honour it according to its terms, unless it has notice of clear fraud committed by the beneficiary ...'

In the present case the document in question is called 'security guarantee' and in the agreement dated 3 October 1985 it is referred to as 'security deposits'. The question that arises here is whether a security guarantee or security deposit document can be treated in the same manner as performance guarantee or performance bond. A performance guarantee or performance bond is a

guarantee given by a bank on behalf of its customer that the customer will duly carry out the contract of sale. See Poh Chu Chai, *Law of Banking* (1989) at p 477. A performance bond may be purchased from an insurance company. See TP Fitch, *Dictionary of Banking Terms* (1990) at p 459. There are two types of performance bond — a conditional performance bond and an 'on-demand' performance bond.

I shall now examine the position in the present case.

Under the agreement dated 3 October 1985 between the plaintiff and the defendant, the defendant agreed to supply to the plaintiff reinforced concrete spun pipes to Felda Kalabaka Complex, Sabah for a total contract price of $2,350,700 for the period from 6 August 1985 to 31 May 1986. As a condition precedent to the execution of the said agreement the plaintiff was required to deposit with the defendant a sum equivalent to five percent of the value of the contract which was $117,557. On the question of security deposit, cl 2 of the said agreement provides:

(a) The supplier shall as a condition precedent to the execution of the agreement of this contract, deposit with the Authority a sum equivalent to the amount referred to in the Appendix in cash or by way of a banker's guarantee which shall in any event be equivalent to 5% of the value of the contract price which guarantee shall be in a form to be prescribed by the Authority and which deposit shall hereinafter be referred to as 'the security deposit'. It is agreed that the Authority may utilize and make payments out of or deductions from the said security deposit in accordance with the terms of this contract.

(b) The security deposit (or any balance remaining to the credit of the Supplier) shall be released within the period stated in the Appendix from the date of expiry of the contract.

(c) The security deposit (or any balance thereof remaining to the credit of the supplier) shall be forfeited to the Authority at any time in the event of any breach of the terms, covenants, conditions and stipulations on the supplier's part to be performed or observed in this contract.

Pursuant to the above condition, the plaintiff obtained and delivered to the defendant a security guarantee for the sum of $117,535 which was accepted by the defendant. The security guarantee, dated 2 October 1955, was issued by Jerneh Insurance Corp Sdn Bhd and addressed to the defendant as the beneficiary. The security guarantee states:

> In consideration of your agreeing to grant Kirames Sdn Bhd 4½ M/S, Apas Road, Tawau, Sabah (hereinafter called the 'paid contractor') bearing No 0232485-VS-0-SP (hereinafter called 'the said contract') in respect of supply and delivery of RC span pipes to Felda Kalabakan Complex, Sabah.
>
> We, Jerneh Insurance Corporation Sdn Bhd Limited, having the registered office at 7th Floor, Wisma MISC, No 2, Jalan Conlay, Kuala Lumpur do hereby irrevocable and absolutely guarantee that the sum of Ringgit 117,535 by way of security deposit under the said contract shall be paid to you by us as per the following terms:
>
> (a) the said sum of Ringgit 117,535 shall be paid by us forthwith on demand by you in writing without your having to assign any reason whatsoever for such demand;
>
> (b) the said sum of Ringgit 117,535 shall be paid by us forthwith to you irrespective of whether or not there is any dispute between the said contract and yourselves (the Authority) in respect of or relating to the said contract or in respect of any other matter and irrespective of whether or not such said dispute, if any, has been settled, resolved, litigated or adjudicated upon otherwise howsoever.
>
> This guarantee is effective from 6 September 1985 ...

It is clear that the above document is a guarantee given by Jerneh Insurance Corp Sdn Bhd on behalf of the plaintiff for the due performance of the contract dated 3 October 1985. The guarantee is an 'on-demand' guarantee.

I am satisfied that the above document is a performance guarantee or performance bond.

The next question to consider is whether the plaintiff is entitled to an order restraining the defendant from making a demand for payment in respect of the security guarantee. The cases referred to earlier, viz *Bolivinter Oil SA* v *Chase Manhattan Bank*;[3] *Harbottle* v *National Westminster Bank*;[4] *Edward Owen*;[5] and *United Trading Corp* v *Allied Arab Bank*,[6] laid down the principle that the court will not restrain a bank which gives a performance guarantee, from honouring it according to its terms except when there is a clear case of fraud.

In the present case, however, the injunction was obtained against the defendant. There are authorities which say that the court will not restrain a defendant who is a party to a contract from making a demand for payment under a letter of credit or under a performance guarantee. In *Hamzeh Malas & Sons* v *British Imex Industries Ltd*[7] the plaintiffs contracted to purchase from the defendants a large quantity of reinforced steel rods to be delivered in two instalments. Payment was to be effected by the opening of two letters of credit with a bank. The letters were duly opened and the first letter of credit was realized by the defendants on the delivery of the first instalment. The plaintiffs complained that that instalment was defective and sought an injunction to restrain the defendants from realizing the second letter of credit. The learned judge refused the application. The plaintiffs appealed and the English Court of Appeal dismissed the appeal. In *Howe Richardson Scale Co Ltd* v *Polimex-Cekop*[8] the plaintiff entered into a contract for the sale and delivery of some valuable equipment. The contract price was P500,000 of which $25,000 was payable in advance within 45 days on the signing of the contract on the presentation by the plaintiff bank guar-

antee. Polimex claimed repayment of $25,000 under the guarantee on the ground that delivery had not been made. The plaintiff applied for an injunction to restrain Polimex from claiming under the guarantee. The Court of Appeal decided that it would be wrong for the court to interfere with Polimex's apparent right under the guarantee to seek payment from the bank. See also *Intraco Ltd* v *Notis Shipping Corp of Liberia ('The Bhoja Trader')*.[9]

Following the authorities I have just cited, I am of the view that the defendant in the present case is entitled to demand payment under the terms of the security guarantee. There is no evidence of fraud in this case. The injunction granted on 6 May 1986 is therefore set aside. The senior assistant registrar will hold an enquiry as to damages suffered by the defendant as a result of the injunction and the plaintiff is ordered to pay such damages as assessed to the defendant. The costs of this application shall be paid by the plaintiff to the defendant.

Application allowed.

Solicitors: *Satchi & Co; Ranjit Thomas & Kula.*

Reported by *Yap Shao Sin*

Bank Bumiputra Malaysia Bhd v Fu Lee Development Sdn Bhd & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO D4-23-3162-87
ZAKARIA YATIM J
10 SEPTEMBER 1990

Banking — Guarantee — Whether the plaintiff's action against the second defendant as guarantor was time-barred — Whether there was a variation of the terms of the principal contract without the second defendant's consent — Limitation Act 1953 — Contracts Act 1950, s 86

Civil Procedure — Limitation — Guarantee — Action against guarantor — When cause of action accrues — Time to run from date of letter of demand

This was an appeal by the plaintiff against the decision of the senior assistant registrar who had ordered their application for summary judgment to be dismissed with costs. The plaintiff by a letter dated 14 December 1978 granted to the first defendant an overdraft facility for a period of two years. The second defendant signed a letter of guarantee on 18 December 1978 as one of two guarantors for the facility. The first defendant failed to make repayments on the due date, 14 December 1980.

The second defendant argued that, as the expiry date of the facility was 14 December 1980, the six-year period started to run from 15 December 1980 being the date that the plaintiff's cause of action arose since no demand was required to initiate the suit against the first defendant. Consequently, the second defendant argued that when the principal contract was determined so was the guarantee and since the present suit was filed on 16 September 1987 a period of six years and nine months had expired and thus the plaintiff was time-barred. The second defendant also raised the allegation that there was a variation in the terms of the principal contract in that the plaintiff allowed the facility to extend to a period of about nine years without the consent of the second defendant. The plaintiff argued that even though the extension of the duration of the facility was a variation of the principal contract such variation was unsubstantial and did not discharge the second defendant from liability.

Held, allowing the plaintiff's appeal and entering summary judgment against the second defendant:

(1) Where there is a covenant or promise to pay a collateral sum on demand, such as covenant by a surety for the principal debtor, a request must be made before an action is brought or before the money can be considered as owing by the collateral debtor.

(2) Here, the guarantee provided that the second defendant would pay the plaintiff 'on demand'. Hence, when the plaintiff made a demand on 29 July 1987 on the second defendant a cause of action arose against him and time therefore only started to run from the date of the plaintiff's letter of demand for the purpose of the Limitation Act 1953. Since the present suit was filed on 16 September 1987 the plaintiff's claim against the second defendant was not time-barred.

(3) The extension of the period of the overdraft facility did not prejudice the first defendant and was in fact an advantage to the first borrower as well as to the guarantors and hence was an unsubstantial alteration. Furthermore, the unsubstantial nature of the variation was self-evident in the present case. Consequently, the second defendant was not discharged as a guarantor by such unsubstantial variation.

(4) Moreover, there was a time and indulgence clause in the letter of guarantee which made it clear that the extension of the period of the overdraft facility without consent of the second defendant did not discharge him from his liability under the guarantee.

[Bahasa Malaysia summary

Ini adalah satu rayuan oleh plaintif terhadap keputusan penolong kanan pendaftar yang memerintahkan permohonan mereka untuk penghakiman terus ditolak dengan kos. Melalui surat bertarikh 14 Disember 1978 plaintif memberikan kepada defendan pertama satu kemudahan overdraf untuk tempoh dua tahun. Defendan kedua menandatangani satu surat jaminan pada 18 Disember 1978 sebagai satu daripada penjamin bagi kemudahan itu. Defendan pertama gagal membuat bayaran pada hari yang dipersetujui, 14 Disember 1980.

Defendan kedua menghujah bahawa, memandangkan yang tarikh tamat kemudahan itu adalah 14 Disember 1980, tempoh enam tahun mula berjalan dari 15 Disember 1980, tarikh kausa tindakan plaintif berbangkit sebab tiada tuntutan diperlukan untuk memulakan dakwaan terhadap defendan pertama. Lantaran itu, defendan kedua menghujah bahawa apabila kontrak utama ditamatkan begitu juga jaminan itu dan oleh kerana saman ini difailkan pada 16 September 1987, tempoh enam tahun dan sembilan bulan telah berlalu dan sebab itu plaintif dibatasi masa. Defendan kedua juga membuat dakwaan bahawa terdapat perubahan dalam terma kontrak utama kerana plaintif membenarkan kemudahan itu berterusan selama kira-kira sembilan tahun tanpa persetujuan defendan kedua. Plaintif menghujah bahawa walaupun perlanjutan tempoh kemudahan itu adalah satu perubahan kontrak utama, perubahan sedemikian tidak substansial dan tidak melepaskan defendan kedua daripada tanggungan.